Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1979

No. 79-974

STATE OF MINNESOTA,

Petitioner,

vs.

BERNARD CLARK, GARY ALLEN STEWART, JACK FULSTROM, ALBERT LeROY BRUNNER, EDWARD JACK LARSON, LESTER DEAN FINEDAY, MARVIN JOSEPH FRENCH, LEONARD EUGENE BUTCHER, HAROLD OWEN ANNETTE, HAROLD L. BROWN, ALVIN FRANCES GJUSTRUM, WALTER BUTCHER and LEONARD BUTCHER,

Respondents.

BRIEF OF BERNARD CLARK, GARY ALLEN STEWART, JACK FULSTROM, ALBERT LeROY BRUNNER, EDWARD JACK LARSON, LESTER DEAN FINEDAY, MARVIN JOSEPH FRENCH, LEONARD EUGENE BUTCHER, HAROLD OWEN ANNETTE, HAROLD L. BROWN, ALVIN FRANCES GJUSTRUM, WALTER BUTCHER and LEONARD BUTCHER, IN OPPOSITION TO PETITION FOR CERTIORARI

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QUESTION PRESENTED

I. Whether the State of Minnesota may regulate the hunting and fishing activities of enrolled members of the

White Earth Bank of Chippewa Indians on non-Indian owned land within the boundaries of the White Earth Reservation boundaries as established by Treaty in 1867.

STATEMENT

A lengthy and comprehensive factual stipulation and set of exhibits were agreed to by the parties and filed in court.

The Defendants, all enrolled members of the White Earth Band of Chippewas, (Stipulation, §1) one of the Bands comprising the Minnesota Chippewa Tribe, a federally-recognized Tribe (Stipulation §2) were arrested for various violations of Minnesota game and fish laws within the thirty-two townships reserved for allotments to Indians residing on the White Earth Reservation or be removed to that Reservation under the provisions of the Nelson Act. The violations occurred on non-Indian owned land. Some were on public roads and some on non-Indian land adjoining lakes or streams.

The State District Court for Becker County, Seventh Judicial District, dismissed the prosecutions on the grounds the Defendants had treaty protected rights to hunt and fish within the White Earth Reservation boundaries and the Court lacked subject matter jurisdiction.

The State of Minnesota appealed the dismissals to the Minnesota Supreme Court. The Minnesota Supreme Court affirmed the order dismissing.

Additional pertinent facts are that pursuant to the Nelson Act (25 Stat. 642) the members of the White Earth Band did "grant, cede, relinquish and convey to the United States all . . . [their] right, title and interest in and to" the four northern townships (Townships 146, 145, 144

and 143 North) in Range 37 West. The original Reservation as created by the Treaty of 1867 contained 36 townships. (Stipulation §36 and 14). None of the violations took place in the four "ceded townships".

REASONS FOR DENYING THE PETITION FOR CERTIORARI

I.

THE DECISION OF THE MINNESOTA SUPREME COURT IS CONSISTENT AND IN ACCORD WITH APPLICABLE DECISIONS OF THIS COURT AND IT IS ALSO CONSISTENT WITH EXISTING FEDERAL POLICY.

The decision of the Minnesota Supreme Court was made after examining voluminous exhibits submitted by both sides and a comprehensive set of stipulated facts. The Counties of Beltrami, Cass, Clearwater, Hubbard, Koochiching, Lake of the Woods, Mahnomen, Pennington and Polk submitted a Brief as Amici Curiae in support of the Plaintiff-Appellant, State of Minnesota. Counsel for Amici Curiae were also allowed to make oral arguments before the Minnesota Supreme Court. The Minnesota Supreme Court by a unanimous opinion affirmed the order of the Becker County District Court dismissing the prosecution of the thirteen Chippewa Indian Defendants for violation of state game and fish laws.

The Supreme Court of Minnesota thoroughly analyzed and discussed the decisions of this Court in *DeCoteau v. District County Court*, 420 U. S. 425 (1975); *Rosebud Sioux Tribe v. Kneip*, 430 U. S. 584 (1977); *Mattz v. Arnett*, 420 U. S. 444; and *Seymour v. Superintendent*, 368 U. S. 355. The Court noted the distinction between *DeCoteau* and the present case. It stated at 282 NW 2d at 908 (Petitioner's Appendix A-11) that:

> In sharp contrast, the defendants here have persuasively shown that the White Earth Indians desired to keep the reservation intact and understood that it would remain so except for the four townships of pine preserves ceded outright to the United States. Accordingly we believe the two cases are markedly different from one another and thus DeCoteau is not controlling in this case.

The Petitioners have cited the decision of the United States District Court for the District of Minnesota in *United States v. Minnesota*, 466 F. Supp. 1382 (1979) *appeal docketed*, No. 79-1420 (8th Cir., June 1, 1979) as being contrary to the Minnesota Supreme Court holding in this case. There is no such inconsistency. That case dealt with the rights to hunt and fish of the Red Lake Band of Chippewas on lands ceded by them and not reserved for allotment or reservation purposes. In contrast this case deals with lands reserved within thirty-two townships for allotment to Indians residing on or to be removed to the White Earth Reservation.

This Court has dealt with the tribal status of the Chippewas in *Chippewa Indians v. United States*, 307 U. S. 1 (1939) wherein this Court stated at page four:

> It is true that, prior to the adoption of the Act of 1889, the tribe had been broken up into numerous bands, some of which held Indian title to tracts in the State of Minnesota. The Act refers to these collectively as "The Chippewas in the State of Minnesota." Whether or not the tribal relation had been dissolved prior to it adoption, the Act contemplates future dealings with the Indians upon a tribal basis. It exhibits a purpose gradually to emancipate the Indians and to bring about a status comparable to that of citizens of the United States. But it is plain that, in the interim,

> Congress did not intend to surrender its guardianship over the Indians or treat them otherwise than as tribal Indians.
>
> This is evidenced by a series of acts, the first of which was adopted nineteen months after the Act of 1889, which are inconsistent with the view that the Congress considered the Indians as emancipated or intended to enter into a binding contract with them as individuals. Many of these statutes refer to the Chippewas of Minnesota as a tribe. Moreover, an examination of the Act of 1889 discloses that it is not cast in the form of an agreement. and, we may not assume that Congress abandoned its guardianship of the tribe or the bands and entered into a formal trust agreement with the Indians, in the absence of a clear expression of that intent.

The United States Court of Claims in *Chippewa Indians of Minn. v. U. S.*, 90 S. Cls. 140, discusses in detail the reserved portion of the White Earth Reservation and the effect on it of the Act of 1889. The Court said:

> Defendant also contends that the reserved portion of the White Earth Reservation was not ceded under the Act of 1889, or otherwise; . . . .
>
> We are of opinion that the position of the defendant is correct and that plaintiffs are not entitled to recover.

The Minnesota Supreme Court decision is in accord with applicable Federal Court decisions including those of this Court.

II.

THE ISSUES RAISED IN THIS CASE AND RULED UPON BY THE MINNESOTA SUPREME COURT ARE IN KEEPING WITH THE EXPECTATIONS OF THE WHITE EARTH INDIANS, THE UNITED STATES AND THE STATE OF MINNESOTA THAT HAVE DEVELOPED SINCE THE ENACTMENT OF THE NELSON ACT OF 1889 AND THESE ESSENTIAL RELATIONS SHOULD NOT BE DISTURBED.

The Nelson Act only applied to the State of Minnesota and the Chippewas of Minnesota. Its very terms are unique to the Chippewas of Minnesota and their reservations and its interpretation cannot be used to assist in interpretations elsewhere.

The Petitioners suggest that the interpretation of the Act will have "immense jurisdictional significance within the state. Not only are Indian hunting and fishing rights at stake, but ultimately so is general state regulatory and tax jurisdiction, and probably the issue of Indian jurisdiction over non-Indians."

Respondents suggest that the Minnesota Supreme Court recognized that this case had limited issues (see footnote 6). This case is certainly not an appropriate case to decide issues raised for the first time here and not raised before the Minnesota Supreme Court. This Court has in the past decided a tax question on the Leech Lake Reservation of the Minnesota Chippewa Tribe in the case of *Bryan v. Itasca County, Minnesota*, 426 U. S. 373 (1976). There is presently pending the consolidated cases of *United States v. Minnesota* and *White Earth Band of Chippewa Indians v. Herbst*, Civ. No. 3-74-63 and Civ. 3-74-305 in the Federal District Court for the District of Minnesota. The

Plaintiffs in these cases are seeking a declaratory judgment that the White Earth Band of Chippewas has exclusive hunting and fishing rights within the boundaries of the White Earth Reservation; and the United States in its action is seeking a declaratory judgment that the State of Minnesota has no jurisdiction over Indian hunting and fishing within the White Earth Reservation.

The issues in these cases are much broader than the narrow issues in the instant case and the Petitioner has raised the same issues in these cases that it seeks to raise in its Petition here. Respondents suggest that the pending Federal District Court case is an appropirate forum to resolve these issues and that they can be more fully developed factually in that forum than by this Court granting certiorari.

CONCLUSION

The decision of the Minnesota Supreme Court is in accordance with prior law and certiorari should be denied.

Respectfully submitted,

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